

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company	:	
(Ameritech Illinois) and Digital	:	
Teleport, Inc.	:	
	:	02-0548
Joint Petition for Approval of	:	
Negotiated Interconnection	:	
Agreement dated July 16, 2002,	:	
pursuant to 47 U.S.C. §252.	:	

ORDER

By the Commission:

Procedural History

In this proceeding, Illinois Bell Telephone Company (“Ameritech”) and Digital Teleport, Inc. (“Digital”) filed with the Illinois Commerce Commission (“Commission”) a verified joint petition seeking the Commission’s approval of a negotiated interconnection agreement (“Interconnection Agreement” or “Agreement”) dated July 16, 2002, pursuant to Sections 252(a)(1) and 252(e) of the federal Telecommunications Act of 1996 (“TA 96”), 47 U.S.C. 151 et seq. As explained below, the Interconnection Agreement between Ameritech and Digital adopts the terms of an agreement between Ameritech and Sprint Communications Company, LP, dated February 14, 2002.

A copy of the Agreement was filed with the joint petition. Also attached to the joint petition is a verified statement in support thereof from Eric Larsen, Director-Negotiations for Southwestern Bell Telephone LP, d/b/a Southwestern Bell Telephone Company/Illinois Bell Telephone Company Negotiations and Interconnection.

Pursuant to due notice, this matter came on for hearing before a duly authorized administrative law judge of the Commission at its offices in Springfield, Illinois. Ameritech and the Commission Staff (“Staff”) entered appearances through their respective counsel. The verified statement of Olusanjo Omoniyi of the Commission’s Telecommunications Division was admitted into the record. In his statement, Mr. Omoniyi recommended approval of the Agreement for the reasons, and subject to the conditions, described below. At the conclusion of the hearing, the record was marked “Heard and Taken.” No petitions to intervene were received, and no other appearances were entered.

Section 252 of the Telecommunications Act of 1996

Section 252(a)(1) of TA 96 allows parties to enter into negotiated agreements regarding requests for interconnection, services, or network elements pursuant to Section 251. Ameritech and Digital have negotiated such an Agreement, and have submitted it for approval in this proceeding.

Section 252(a) of TA 96 provides, in part, that "[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State commission." Section 252(e)(1) provides that a state commission to which such an agreement is submitted "shall approve or reject the agreement, with written findings as to any deficiencies." Section 252(e)(2) provides that the state commission may only reject the negotiated agreement if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or that "the implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity."

Section 252(e)(4) provides that the agreement shall be deemed approved if the state commission fails to act within 90 days after submission by the parties. This provision further states that "[n]o State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section." Section 252(e)(5) provides for preemption by the Federal Communications Commission if a state commission fails to carry out its responsibility and Section 252(e)(6) provides that any party aggrieved by a state commission's determination on a negotiated agreement may bring an action in an appropriate federal district court.

Section 252(h) requires a state commission to make a copy of each agreement approved under subsection (e) "available for public inspection and copying within 10 days after the agreement or statement is approved."

Section 252(i) requires a local exchange carrier to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

Purpose and Terms of the Interconnection Agreement

The Interconnection Agreement between Ameritech and Digital adopts the terms of an agreement between Ameritech and Sprint Communications Company, LP, dated February 14, 2002. As such, the proposed Agreement establishes financial and operational terms for the interconnection of Ameritech's and Digital's telecommunications networks and facilities. Among other things, the Agreement contains terms applicable to physical interconnection, access to right-of-way, collocation, transmission and routing of traffic, access to unbundled network elements, number portability, database access, and the purchase of services for resale. The Agreement will remain in effect until February 15, 2004.

Staff Recommendation

Staff reviewed the Agreement in light of the criteria contained in Section 252(e)(2)(A) of TA 96. Under this section, the Commission may only reject an agreement, or any portion thereof, adopted by negotiation under subsection (a) if it finds that (i) the agreement, or portion thereof, discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement, or portion thereof, is not consistent with the public interest, convenience, and necessity.

With regard to the issue of discrimination, Staff's position is that in order to determine if a negotiated agreement is discriminatory, the Commission should determine if all similarly situated carriers are allowed to purchase the service under the same terms and conditions as provided in the Agreement. Staff believes a carrier should be deemed to be a similarly situated carrier for purposes of this Agreement if telecommunications traffic is exchanged between it and Ameritech for termination on each other's networks and if it imposes costs on Ameritech that are no higher than costs imposed by Digital. If a similarly situated carrier is allowed to purchase the same service(s) under the same terms and conditions as provided in this contract, then Staff says this contract should not be considered discriminatory. According to Staff, since Section 252(i) of the 1996 Act allows similarly situated carriers to enter essentially the same contract, the proposed Agreement should not be deemed discriminatory.

With regard to the public interest, convenience and necessity, Staff recommends that the Commission examine the Agreement on the basis of economic efficiency, equity, past Commission orders and state and federal law. Mr. Omoniyi stated that all services in the Agreement are priced at or above their respective long run service incremental cost ("LRSICs"), and thus should be considered economically efficient. Staff concluded, and the Commission agrees, that implementation of the Agreement would be consistent with the public interest.

Staff concluded that the Agreement should be approved, subject to Staff's recommendations regarding implementation. With respect to implementation of the Agreement, Staff recommended that the Commission require Ameritech to, within five days from the date the Agreement is approved, modify its tariffs to reference the Agreement for each service. Staff stated that this requirement is consistent with the Commission's orders in previous negotiated agreement dockets and allows interested parties access to the Agreement. Staff recommended that such references be included in the following section of Ameritech's tariffs: Agreements with Telecommunications Carriers (ICC No. 21, Section 19.15).

In addition, Staff recommended that the Commission require Ameritech to file a verified statement with the Chief Clerk of the Commission, within five days of approval by the Commission, that the approved Agreement is the same as the Agreement filed in this docket with the verified joint petition. Staff further recommended that the Commission direct the Chief Clerk to place the Agreement on the Commission's web

site under "Interconnection Agreements." The Commission concludes that Staff's recommendations regarding implementation of the Agreement are reasonable and should be adopted.

Findings and Ordering Paragraphs

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (2) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (3) the Agreement does not discriminate against a telecommunications carrier not a party to the Agreement and is not contrary to the public interest; nor is the Agreement inequitable, inconsistent with past Commission orders, or in violation of state or federal law;
- (4) in order to assure that the implementation of the Agreement is in the public interest, Ameritech should implement the Agreement by filing a verified statement with the Chief Clerk of the Commission, within five days of approval by the Commission, that the approved Agreement is the same as the Agreement filed in this docket with the verified joint petition; the Chief Clerk should place the Agreement on the Commission's web site under "Interconnection Agreements";
- (5) within five days of the entry of this Order, Ameritech should modify its tariffs to reference the Agreement in the manner recommended by Staff and described in the prefatory portion of this Order above;
- (6) the Agreement should be approved as hereinafter set forth;
- (7) approval of this Agreement does not have any precedential affect on any future negotiated agreements or Commission Orders.

IT IS THEREFORE ORDERED by the Commission that the Agreement between Ameritech and Digital is hereby approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that Ameritech shall comply with Findings (4) and (5) hereinabove.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 7th day of November, 2002.

(SIGNED) KEVIN K. WRIGHT

Chairman